

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: September 2, 2003

To: The Commission
(Meeting of September 4, 2003)

From: Alan LoFaso, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 855 (Firebaugh and Levine)** Wireless telecommunications:
access to state property
As Amended August 18, 2003

Legislative Subcommittee Recommendation: Support with amendments.

Summary: This bill would require the Commission to administer a grant program aimed at narrowing the digital divide, funded by 15 percent of revenues from state property leases to wireless telecommunication carriers.

Digest: Existing law authorizes Director of the Department of General Services (DGS), with the approval of the state agency concerned, to negotiate on behalf of the state, the lease of state-owned property to telecommunication and information technology providers.

Existing law, Chapter 278, Statutes of 1994 (AB 3643, Polanco) required the Commission to open a proceeding to examine the current and future definitions of universal service in telecommunications. Pursuant to that legislation, the Commission, in D. 96-10-066, created, among other programs, the California Teleconnect Fund (CTF) to provide discounted rates for specified services to schools and libraries.

Existing law, P.U. Code sec. 280, codifies the CTF “to advance universal service by providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community based organizations.” P.U. Code sec. 280(b) also requires all revenues collected pursuant to Commission-authorized rates to be deposited with the state Controller for appropriation by the Legislature to the Commission for the program, including administration and oversight costs. Finally, P.U. Code sec. 280(c) provides that CTF funds “shall be utilized exclusively” for the purpose described above (emphasis added).

Existing law, Chapter 308, Statutes of 2002 (SB 1863, Bowen), stated legislative intent that any program administered by the Commission that addresses the inequality of access to advanced telecommunications services by providing those services to schools and libraries at a discounted price should also provide comparable discounts to a nonprofit community technology program. Resolution T-16742, adopted May 8, 2003, implemented this statute by extending comparable discounts – 50% – for Municipal or County Government Owned and Operated Hospital and Health Clinics and Community-Based Organizations (CBOs).

This bill would require the Director of DGS to compile and maintain an inventory of state-owned real property, excluding state-owned highway rights-of-way, that may be available for lease to providers of wireless telecommunications services for location of wireless telecommunications facilities, and to make the inventory available to those providers.

This bill would mandate that 15% of the revenues generated from these leases, upon appropriation by the Legislature, shall be deposited in a newly created Digital Divide Account within the California Teleconnect Fund Administrative Committee Fund, to be administered by the Commission in conjunction with a grant program aimed at narrowing the digital divide.

This bill would require the Commission to develop a program to provide grants on a competitive basis to tax-exempt, nonprofit “community technology programs”, subject to criteria to be established by the Commission. These programs would include, but not be limited to, the following types of programs:

- Providing open access to and opportunities for training in technology;
- Developing content relevant to the interests and want of the local community;
- Preparing youth for opportunities in the new economy through multimedia training and skills; and
- Harnessing technology for e-government services.

This bill would provide that the grant program would not be implemented unless \$200,000 dollars has been deposited into the account.

This bill would also require recipients of grants to report to the Commission annually on the effectiveness of the grant program, and for the Commission to report to the Legislature and the Governor annually on the effectiveness of the program.

This bill would provide additional codification of the CTF.

Analysis: This analysis primarily addresses the provisions of the measure addressing the Digital Divide Grant Program.

AB 855 would build on several legislatively initiated measures to examine concerns associated with the “digital divide”:

- SB 1712 (Polanco, Chapter 943, Statutes of 2000) required the Commission to examine whether the definition of universal service universal service should be expanded to include high-speed Internet access (See D.96-10-066; "Broadband Services As a Component of Basic Telephone Service", August 2002.)
- AB 140 (Strom-Martin, Chapter 906, Statutes of 2001) required the Commission to establish a Rural Telecommunications Infrastructure Grant Program to provide qualifying unserved, rural communities with grants up to \$2.5 million to pay for the construction of telecommunication facilities to serve these areas.
- 1863 (Bowen, Chapter 308, Statutes of 2002) amended the state's telecommunication's policies by declaring that CBOs should receive the same discount on advanced telecommunications services as schools and libraries. Pursuant to this measure, the Commission increased the discount level to 50% for CBOs and specified local government health providers. (See Resolution T-16742, adopted May 8, 2003.)
- SB 1563 (Polanco, Chapter 674, Statutes of 2002) required the Commission to develop a plan by December 31, 2004 to encourage the availability and use of advanced communications infrastructure. Pursuant to this measure, the Commission initiated Rulemaking (R.) 03-04-003 to examine new, affordable technologies and potential for additional subsidies to bridge the digital divide.

Funding for Digital Divide Grants

Data show that current leases of state property by wireless telecommunications companies generate only approximately \$960,000 per year. Under the bill, \$144,000 equaling 15 percent of that amount would go for digital divide projects. Proponent cellular carriers have argued that the provisions of the bill assisting carriers in obtaining site information for state facility leases would generate 2000 new leases over the next two years. These new leases would provide \$2.7-7.2 million for the Digital Divide Grant Program.

Suggested Amendments

The Legislative Subcommittee discussed two amendments that the sponsors and author have agreed to:

- Provide for funding of administrative costs via the California Teleconnect Fund Administrative Committee (CTF-AC).

- Provide that the Digital Divide Grant Program not be implemented until \$500,000 is projected to be available to fund the program, based on existing new leases.

Prior Legislation:

AB 855 is a reintroduction of AB 468 (Firebaugh) of 2002, which was vetoed by Governor Davis.

AB 468 differed in that it would have narrowly preempted local zoning ordinances by authorizing placement of wireless telecommunications facilities on state-owned property without local government land use approval if the three requirements were not met. Moreover, AB 468 also would have narrowly preempted local zoning ordinances by imposing automatic approval of facilities in 60 days if a local agency does not to respond to the wireless telecommunications providers notice within that time period.

FISCAL IMPACT

The implementation of this bill would require the PUC to add two new senior Public Utility Regulatory Analyst (PURA IV) positions. One would be responsible for establishing a sub-account in the California Teleconnect Fund for pilot program funds, and the other would be responsible for the development and implementation of the contracts associated with the pilot projects. The cost for each PURA IV position is estimated at \$88,000, totaling \$176,000, plus \$25,000 for travel. Thus, the total cost estimate for these two new positions is approximately \$201,000.

LEGISLATIVE HISTORY

Assembly U.&C.: 9-2 (do pass as amended) (4/28/03)
 Assembly Approps: 17-7 (do pass as amended) (5/28/03)
 Assembly Floor: 68-9 (passed to the Senate) (6/4/03)
 Senate Governmental Organization: 8-1 (do pass) (7/01/03)
 Senate E.U.&C: 6-0 (do pass as amended) (7/08/03)
 Senate Approps: 7-4 (do pass as amended) (8/29/03)

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Date: September 2, 2003

BILL LANGUAGE:

BILL NUMBER: AB 855 AMENDED
BILL TEXT

AMENDED IN SENATE AUGUST 18, 2003
AMENDED IN SENATE JULY 16, 2003
AMENDED IN ASSEMBLY JUNE 2, 2003
AMENDED IN ASSEMBLY MAY 6, 2003

INTRODUCED BY Assembly Members Firebaugh and Levine

FEBRUARY 20, 2003

An act to add Section 14666.8 to the Government Code, to amend Section 280 of, and to add Section 709.5 to, the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 855, as amended, Firebaugh. Telecommunications: access to state property for wireless facilities: California Teleconnect Fund Administrative Committee Fund: Digital Divide Account.

(1) Existing law requires the Director of General Services, with the approval of the state agency concerned, to negotiate, in the name of the state, access to state-owned property not used for highway purposes, for those purposes and subject to those conditions, limitations, restrictions, and reservations determined by the director to be in the interest of the state. Existing law provides that this requirement to negotiate access applies to telecommunications and information technologies. Existing law requires, to the extent permitted under existing law, the Director of General Services to determine the amount of consideration for, and means of access, which means shall include, but not be limited to, lease, permit, or other form of providing a monetary or service consideration for the access.

Existing law imposes similar requirements on the Director of Transportation with respect to state-owned highway rights-of-way.

This bill would require the Director of General Services, within 120 days of the operative date of the bill, to compile and maintain an inventory of state-owned real property, excluding state-owned highway rights-of-way that may be available for lease to providers of wireless telecommunications services for location of wireless telecommunications facilities, and to make the inventory available upon request, in a cost-effective manner. It would authorize the director to negotiate and enter into an agreement for the lease of certain department-managed and state-owned real property to any provider of wireless telecommunications services for location of its facilities, subject to specified conditions.

(2) Existing law establishes the California Teleconnect Fund Administrative Committee to advise the Public Utilities Commission regarding the development, implementation, and administration of a program to advance universal service by providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community organizations, consistent with an uncodified statute requiring the commission to open and conclude a proceeding relative

to the implementation of universal service in telecommunications. Existing law establishes the California Teleconnect Fund Administrative Committee Fund in the State Treasury and provides that moneys in the fund, collected by telephone corporations in utility rates authorized by the commission and deposited into the fund, may only be expended for the purposes authorized, upon appropriation in the annual Budget Act.

This bill would require the commission to develop, implement, and administer a program to advance universal service by providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community organizations.

(3) Existing law requires the Public Utilities Commission to develop a plan to encourage the widespread availability and use of advanced communications infrastructure consistent with the state policy of bridging the digital divide.

The bill would require that 15% of the revenues from fees collected from the lease of state-owned real property to the providers of wireless telecommunication services pursuant to its provisions, with certain exceptions, be deposited in the Digital Divide Account established by the bill in the California Teleconnect Fund Administrative Committee Fund. It would require the revenues deposited in the account to be available, upon appropriation by the Legislature, to be administered by the commission to finance digital divide projects through the Digital Divide Grant Program established by the bill. The bill would require the commission to report to the Legislature and Governor annually on the effectiveness of the program.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Wireless telecommunications service is a critical part of California's infrastructure.

(b) The rapid deployment of wireless telecommunications facilities is critical to ensure network access and quality of service.

(c) It is in the public interest to minimize the aesthetic impact of wireless telecommunications towers and facilities necessary to support wireless networks.

(d) Use of property owned by the state, local government agencies, and other public entities for location of wireless telecommunications facilities will expedite deployment of wireless telecommunications service and minimize the aesthetic impact of wireless telecommunications towers and, facilities, or other wireless repeaters, amplifiers, regenerative repeaters, or regenerators that have the shape of natural or manmade structures or objects.

SEC. 2. Section 14666.8 is added to the Government Code, to read:

14666.8. (a) The director shall, within 120 days of the operative date of this section, compile and maintain an inventory of state-owned real property that may be available for lease to providers of wireless telecommunications services for location of wireless telecommunications facilities. This inventory shall be the state's sole inventory of state-owned real property available for

this purpose. The term "state-owned real property," as used in this section, excludes state-owned highway rights-of-way.

(b) The director shall make the inventory available upon request, in a cost-effective manner.

(c) On behalf of the state, the director may negotiate and enter into an agreement to lease department-managed and state-owned real property to any provider of wireless telecommunications services for location of its facilities. A lease for this purpose shall do all of the following:

(1) Provide for fair market value to be paid to the state to the extent permitted under existing law.

(2) Designate a lease term that is acceptable to the director and the state agency that has control over the property. The duration of the initial lease term for any wireless facility ~~shall~~

may not exceed 10 years, and the lease may provide for a negotiated number of renewal terms, not to exceed five years for each term.

(3) Provide for the use of the wireless provider's facilities located on the state-owned real property by any appropriate state agency if technically, legally, aesthetically, and economically feasible.

(4) Facilitate, to the greatest extent possible, agreements among providers of wireless telecommunications services for colocation of their facilities on state-owned real property.

(d) Nothing in this section alters any existing rights of telegraph or telephone corporations pursuant to Section 7901 of the Public Utilities Code.

SEC. 3. Section 280 of the Public Utilities Code is amended to read:

280. (a) The commission shall develop, implement, and administer a program to advance universal service by providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community organizations, consistent with Chapter 278 of the Statutes of 1994.

(b) There is hereby created the California Teleconnect Fund Administrative Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of a program to advance universal service by providing discounted rates to qualifying schools, libraries, hospitals, health clinics, and community organizations, consistent with Chapter 278 of the Statutes of 1994, and to carry out the program pursuant to the commission's direction, control, and approval.

(c) All revenues collected by telephone corporations in rates authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. Commencing on October 1, 2001, and continuing thereafter, the commission shall transfer the moneys received, and all unexpended revenues collected prior to October 1, 2001, to the Controller for deposit in the California Teleconnect Fund Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund.

(d) Moneys appropriated from the California Teleconnect Fund Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

SEC. 4. Section 709.5 is added to the Public Utilities Code, to read:

709.5. (a) Of the revenues from fees collected pursuant to

Section 14666.8 of the Government Code after the operative date of this section, except for revenues from fees from a lease agreement for access to Department of Transportation property or a lease agreement existing prior to the operative date of the section, 15 percent shall be available, upon appropriation by the Legislature, for the purpose of addressing the state's digital divide.

(b) Revenues described in subdivision (a) shall be deposited in the Digital Divide Account, which is hereby established in the California Teleconnect Fund Administrative Committee Fund established pursuant to Section 270, to be used only for digital divide pilot projects.

(c) (1) The Digital Divide Grant Program is hereby established subject to the availability of funding pursuant to this section. The commission may not implement the grant program until at least two hundred thousand dollars (\$200,000) has been deposited into the Digital Divide Account.

(2) The commission shall provide grants pursuant to this subdivision on a competitive basis subject to criteria to be established by the commission and in a way that disburses the funds widely, including urban and rural areas. Grants shall be awarded to community-based nonprofit organizations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code for the purpose of funding community technology programs.

(3) Recipients of grants pursuant to this subdivision shall report to the commission annually on the effectiveness of the grant program.

(4) The commission shall report to the Legislature and the Governor annually on the effectiveness of the program administered pursuant to this subdivision.

(d) For purposes of this section, "community technology programs" means a program that is engaged in diffusing technology in local communities and training local communities in the use of technology, especially local communities that otherwise would have no access or limited access to the Internet and other technologies.

(e) For purposes of this section, "digital divide projects" means community technology programs involved in activities that include, but are not limited to, the following:

(1) Providing open access to and opportunities for training in technology.

(2) Developing content relevant to the interests and wants of the local community.

(3) Preparing youth for opportunities in the new economy through multimedia training and skills.

(4) Harnessing technology for e-government services.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make state-owned real property available for lease, and to make the resulting revenues available for addressing the state's digital divide, at the earliest possible time, it is necessary for this act to go into immediate effect.